

**Notice of Allowability**

Application No.

10/787,253

Examiner

KELLY BEKKER

Applicant(s)

LADD ET AL.

Art Unit

1794

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/15/09.
2. ☒ The allowed claim(s) is/are 34,36,37,39,41,47,51,53,58-62,70-72,76-78,80-99 and 101-106.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying Indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

/Lien T Tran/  
Primary Examiner, Art Unit 1794

**DETAILED ACTION**  
**EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Thomas ORourke on November 17, 2009.

**Please cancel claim 100.**

**Please amend the claims 1, 51, 53, 58, 78, 80, 81, 82, 83, 84, 85, 86, 87, 89, 91, 93, and 103 as follows:**

**Claim 1.** A frozen dessert product comprising a single phase pellet said single phase being a solid phase, said pellet consisting essentially of a premix comprising 6% to 7.5% sugar content, and 0.025% to about 0.075% artificial sweetener, said pellet resulting from said premix being introduced into a cryogen as a small individual volume of liquid, then completely freezing, said pellet remaining in a pellet form at a temperature of from ~~about -25~~ -20°C to about -5°C without fusing to another pellet, and wherein the frozen dessert product does not contain air.

**Claim 51.** The frozen dessert product according to claim 34 wherein said single phase pellet remains frozen at a temperature of ~~about~~ -18°C to ~~about~~ -20°C.

**Claim 53.** The frozen dessert product according to claim 34 wherein said single phase pellet remains frozen at a temperature of ~~about~~ -15°C to ~~about~~ -18°C.

**Claim 58.** A method of forming a single phase dessert product, the method comprising the steps of:

introducing a premix into a body of liquid cryogen as a small individual volume of liquid to form a single phase palletized dessert product wherein said pelletized dessert product does not contain air and consists of a premix without the presence of a bulking agent;

said small individual volume of liquid completely freezing after it is introduced to said body of liquid cryogen to form a solid phase pellet consisting essentially of premix;

said premix comprising an artificial sweetener in the amount of about 0.025% to about 0.075% of the premix; and

further wherein the single phase dessert product, can be stored at a temperature of from ~~[about-25]~~ -20°C to about -5°C while remaining in a solid phase.

**Claim 78.** A pelletized dessert product produced by the method of claim 58, wherein said dessert product does not contain air and can be stored at a temperature of from about -5°C to ~~[about-25]~~ -20°C while maintaining a pelletized structure.

**Claim 80.** A frozen dessert product comprising a single phase pellet formed from a premix comprising from 3.6% to 7.2% sugar, said pellet resulting from said premix being introduced into a cryogen, said pellet consisting essentially of ~~[pre-mix]~~ premix and remaining a single phase solid product at a temperature of from between about -15 and ~~[about-25]~~ -20 degrees Celsius without fusing to another pellet, and wherein the frozen dessert product does not contain air.

**Claim 81.** A frozen dessert product comprising a single phase pellet formed from a premix, said premix containing no bulking agents, said premix comprising from 7.5% to 8.5% total sucrose and sucrose equivalent content said pellet resulting from said premix being introduced into a cryogen, said pellet consisting essentially of ~~[pre-mix]~~ premix and remaining a single phase product at a temperature of ~~[about-25]~~ -20 degrees Celsius to about -5 degrees Celsius without fusing to another pellet, and wherein the frozen dessert product does not contain air.

**Claim 82.** A method of forming a frozen dessert product comprising introducing small individual volumes of liquid of a premix, containing no bulking agents, into a cryogen said ~~[premixing]~~ premix comprising from 7.5% to 8.5% total sucrose and sucrose equivalent content, said premix forming said frozen dessert product in a single phase pellet in said cryogen, said pellet consisting essentially of ~~[pre-mix]~~ premix, said pellet remaining a single phase product at a temperature from ~~[about -25]~~ -20 degrees Celsius to about -5 degrees Celsius, and wherein the frozen dessert product does not contain air.

**Claim 83.** A method of forming a single phase dessert product, the method comprising the steps of:

Introducing a premix into a body of liquid cryogen to form a single phase pelletized dessert product, said premix containing no bulking agent;

Said premix comprising an artificial sweetener in the amount of about 0.025% to about 0.075% of the premix and between 3.6% to 7.2% total sucrose and sucrose equivalent content; and

Further wherein the single phase dessert product consisting essentially of ~~[pre-mix]~~ premix can be stored at a temperature of from ~~[about -25]~~ -20 degrees Celsius to about -5 degrees Celsius, and wherein the single phase dessert product does not contain air.

**Claim 84.** A frozen dessert product comprising a single phase pellet consisting essentially of a ~~[pre-mix]~~ premix, said premix containing no bulking agent, said premix comprising from 1.2% to 3.6% total sucrose and sucrose equivalent content, said pellet resulting from said premix being introduced into a cryogen, said pellet remaining a single phase solid product ~~[a]~~ at a temperature of from between ~~[about -25]~~ -20 and about -15 degrees Celsius without fusing to another pellet, and wherein the frozen dessert product does not contain air.

**Claim 85.** A frozen dessert product comprising a single phase pellet consisting essentially of a ~~[pre-mix]~~ premix, said premix containing no bulking agent, said premix comprising from 0% to 1.2% total sucrose content, said pellet resulting from said premix being introduced into a cryogen, said pellet remaining a single phase solid product ~~[a]~~ at a temperature of ~~[from]~~ from between ~~[about]~~ -20 and about -15 degrees Celsius without fusing to another pellet, and wherein the frozen dessert product does not contain air.

**Claim 86.** A frozen dessert product comprising a single phase pellet consisting ~~[of]~~ essentially of a premix, said pellet being formed by introducing said premix into a cryogen as a small individual volume~~[s]~~ of liquid, said cryogen freezing said ~~[premix]~~ premix to ~~[form]~~ form a single phase pellet, said pellet remaining in a solid phase at a temperature of from ~~[-25]~~ -20°C to -5°C without fusing to an adjacent pellet stored there with, and wherein the frozen dessert product does not contain air.

**Claim 87.** The frozen product according to claim 86 wherein the product can be stored at a temperature of ~~[-25°C to]~~ -20°C without agglomerating with adjacent pellets.

**Claim 89.** The frozen dessert product according~~[ly]~~ to claim 86 wherein the storing and serving temperatures of the pellets is at a temperature range of -20 degrees Celsius and warmer ~~[similar to bulk ice cream products].~~

**Claim 91.** The frozen dessert product according to claim 86 wherein said pellet ~~[has a melting point between approximately -25°C and above -15°C]~~ is solid between -20°C and about -15°C.

**Claim 93.** The ~~[frozen]~~ frozen dessert product according to claim 86 wherein said pellet product can be stored in a conventional commercial freezer at a temperature range of -20C and warmer ~~[utilized for bulk frozen dessert products]~~ while maintaining a pelletized structure.

**Claim 103.** The frozen dessert product according to claim 81 wherein said pellet consist[ing]s essentially of [pre-mix] premix and remain[ing]s a single phase product at a temperature of up to -5 degrees Celsius without fusing to another pellet.

### REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

In the previous office action, mailed February 10, 2009, an objection to the specification due to the abstract of the disclosure, 112 2nd paragraph rejections of claims 57 and 81-84, and a prior art rejections of pending claims were made.

The objection to the specification has been withdrawn in light of applicant's amendments made July 15, 2009.

The 112 second paragraph rejections of claims 57 and 81-84 have been withdrawn in light of applicant's arguments made July 15, 2009. Specifically, on page 17 of applicant's arguments applicant argues and provides evidence that the term "sucrose equivalent content" and "sucrose equivalency" are known and definite terms in the art.

The prior art rejections have been withdrawn as the instant claims recite that the frozen confection contains a pellet which can be stored and remain in a single phase or without fusing to another pellet at a temperature of -20C and warmer and as the primary reference Jones states that the cryogenically frozen product can only be maintained and stored at a temperature of -26.1C or colder in a single phase without fusing to another pellet. Additionally, the instant claims recite that the frozen confectionary product does not contain air and the secondary references require the use of air. The prior art does not teach or suggest a frozen confectionary product that does not contain air and that contains a pellet which can be stored and remain in a single phase or without fusing to

another pellet at a temperature of -20C and warmer, thus there is no teaching, suggestion, or motivation for the instantly claimed invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KELLY BEKKER whose telephone number is (571)272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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